

SENATE BILL 1404

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 211 and Chapter 86 of the Public Acts of 2005, to enact the "Tennessee Beverage Container Recycling Act".

WHEREAS, the general assembly finds that recycling is an important element of an integrated solid waste management system, which can protect and preserve natural resources, conserve energy and reduce economic costs to residents, businesses and local governments within the state; and

WHEREAS, the general assembly finds that reducing litter is important for the promotion of tourism and enhancing the quality of life for the residents of this state; and

WHEREAS, the general assembly finds a need to expand participation in recycling programs; to maximize the economic benefits of such programs to businesses, government and residents; and to reduce litter; and

WHEREAS, the purposes of this act are to increase recycling rates for specified deposit beverage containers, to encourage recycling in general, to reduce litter, and to provide a connection between manufacturing decisions and recycling program management; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding Sections 2 through 29 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known as and may be cited as the "Tennessee Beverage Container Recycling Act".

SECTION 3.

As used in this part, unless the context requires otherwise:

(1) “Administrative fee” means an amount paid by the state to a certified processor to defray administrative costs;

(2) “Board” means the solid waste disposal control board created pursuant to § 68-211-111;

(3) “Cancel” means to crush, flatten, shred or otherwise render a deposit beverage container unfit for redemption;

(4) “Certified processor” means a facility designed for the collection, processing, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and that has been certified by the department to purchase, quantify, document, cancel, process and reuse or sell for reuse, deposit beverage containers that have been collected at certified redemption centers;

(5) “Certified redemption center” means an operation that has been certified by the department to accept empty deposit beverage containers from consumers; sort the containers according to material type and, if applicable, color and size; pay no less than the established refund value either to the consumer or to a recipient designated or intended by the consumer; ensure that the properly sorted containers are received by a certified processor; and, where authorized, cancel the empty containers. A certified redemption center may be:

(A) A dedicated storefront facility;

(B) A facility that is operated by and is a part of:

(i) A grocery store or other retailer;

(ii) A nonprofit agency or facility, such as a homeless shelter;

(iii) A recycling program operated by, or on behalf of, a county, municipal or metropolitan government, including a recycling convenience center, a waste transfer station, a materials recovery facility, or a landfill;

or

(iv) A certified processor;

(C) A portable microsite redemption center;

(D) A mobile redemption center;

(E) A reverse vending machine; or

(F) A drop-off redemption center operating in conjunction with an

electronic certified processor.

(6) "Commissioner" means the commissioner of environment and conservation;

(7) "Comptroller" means the office of the comptroller of the treasury;

(8) "Consumer" means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit;

(9) "Container recovery fee" means an amount paid to the state by a deposit beverage distributor to defray the costs of collecting and recycling deposit beverage containers and administering the deposit program;

(10) "Dealer" means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the state;

(11) "Department" means the department of environment and conservation;

(12) "Deposit beverage" means beer, ale, or other drink produced by fermenting malt; carbonated soft drinks; carbonated and noncarbonated water, including flavored water; tea and coffee drinks regardless of dairy-derived product content; juices, including one hundred percent (100%) juices and juice blends; wine coolers, flavored malt beverages and any other juice-based beverage with an alcohol content of not more than seven percent (7%) by volume; and all nonalcoholic drinks in liquid form and intended for internal human consumption that are contained in a deposit beverage container.

"Deposit beverage" excludes the following:

(A) A liquid which is:

(i) A syrup;

(ii) In a concentrated form; or

(iii) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(B) A liquid which is a drug, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act 21 U.S.C. § 301 et seq.;

(C) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (Public Law 103-417);

(D) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(E) Products designed to be consumed in a frozen state;

(F) Instant drink powders;

(G) Seafood, meat, or vegetable broths, or soups, but not juices;

(H) Milk and all other dairy-derived products, except tea and coffee drinks containing such products; and

(I) Unmixed wine and spirits;

(13) "Deposit beverage container" means an individual, separate, sealed, container that is not considered a refillable beverage container according to subdivision (27), and that is made of glass, aluminum, steel, bimetal, or plastic, including polyethylene terephthalate (PET), high-density polyethylene (HDPE) and all other plastic

types and grades, in sizes less than or equal to two (2) liters, and used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state;

(14) "Deposit beverage container fund," hereinafter the "fund," means a fund created in the state treasury by the department of revenue, into which are deposited all program fees, deposits, fines and interest, and out of which are paid all program costs, refund values, handling fees, administrative fees, disposal costs and other allocations;

(15) "Deposit beverage container program," hereinafter the "program," means an administrative entity created within the division of solid waste management of the department of environment and conservation, to carry out the requirements of this part;

(16) "Deposit beverage distributor" means a person who is a manufacturer of beverages in deposit beverage containers sold in this state, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer, and includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers;

(17) "Drop-off redemption center" means a certified redemption center, typically located adjacent to a participating grocery store, and operating in conjunction with an electronic certified processor as defined in subdivision (18). Drop-off redemption centers accept bags of deposit beverage containers from participating consumers; provide bar-coded labels for the bags; ensure that the labeled bags are transported to and processed by an electronic certified processor; and provide automated teller machines wherein participants may review their redemption accounts and print credit slips to be redeemed inside the participating grocery store;

(18) "Electronic certified processor" means a type of certified processor operating in conjunction with one (1) or more drop-off redemption centers. Electronic certified

processors automatically scan, sort, and cancel empty deposit beverage containers that have been received from participating consumers at drop-off redemption centers; electronically record all transaction information, including quantities, materials and refund amounts due; and post the refund amounts to consumers' redemption accounts;

(19) "Fiscal year" means the twelve-month period beginning on any July 1 and ending on the following June 30;

(20) "Handling fee" means an amount paid by the state to a certified redemption center to defray the costs of, and provide a reasonable financial return for, receiving, quantifying, sorting, storing, documenting, canceling (if authorized) and ensuring that redeemed deposit beverage containers are received by a certified processor;

(21) "Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the state;

(22) "Importer" means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the state for sale or use within the state;

(23) "Microsite redemption center" means a portable, attended roll-off trailer designed and equipped to serve as a certified redemption center, and typically located in the parking lot of a host grocery store or other retailer. Redemption refunds are typically issued in the form of a credit slip that the consumer may redeem for cash or apply toward purchases inside the host grocery store or retailer;

(24) "Mobile redemption center" means a certified redemption center designed to bring redemption services to residences, institutions, conventions, businesses and other entities, either on a one-time or on-going basis. Mobile redemption centers may operate independently, or they may be operated in conjunction with another certified redemption center or a certified processor;

(25) "On-premises consumption" means consumption of a deposit beverage by a

consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes;

(26) "Person" means an individual, partnership, firm, association, public or private corporation, federal agency, the state or any of its political subdivisions, trust, estate, or any other legal entity;

(27) "Refillable beverage container" means a beverage container that is intended to be returned intact to the manufacturer or distributor to be washed, refilled and resold; that is sold in a container which has a brand name permanently marked on it; and that bears a manufacturers' refund value of at least five cents (5¢); and

(28) "Reverse vending machine" means a self-service certified redemption center, typically located adjacent to a grocery store, into which a consumer feeds empty deposit beverage containers. The machine electronically scans the container's bar code, sorts and cancels the container, records the transaction information, and issues a refund in the form of a redeemable credit slip, cash or donation to a designated charity.

SECTION 4.

(a) By September 1, 2009, all deposit beverage distributors operating within the state shall register with the department of revenue in a manner and form prescribed by the department of revenue. After September 1, 2009, any person who desires to conduct business in the state as a deposit beverage distributor shall register with the department of revenue no later than one month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture and importation of beverages in deposit beverage containers as well as in refillable beverage containers. The records shall be made available, upon request, for inspection by the department of revenue and the department of environment and conservation; provided, that any proprietary information obtained by either department

shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any rule adopted pursuant to this part; or

(2) Under an order issued by a court or administrative agency hearings officer.

SECTION 5.

(a) Beginning on October 1, 2009, every deposit beverage distributor shall pay to the department of revenue a container recovery fee for each deposit beverage container manufactured in or imported into the state. The fee shall be imposed only once on the same deposit beverage container, and shall be implemented in phases as follows:

(1) The amount of the container recovery fee from October 1, 2009, until March 31, 2011, shall be one-quarter of one cent (0.25¢) per deposit beverage container;

(2) Beginning on April 1, 2011, the amount of the container recovery fee shall increase to one-half of one cent (0.5¢) per deposit beverage container and shall remain at that level until December 31, 2011; and

(3) Beginning on January 1, 2012, the amount of the container recovery fee shall increase to one cent (1¢) per deposit beverage container, and shall remain at that level until changed by an act of the general assembly.

(b) Payment shall be accompanied by an inventory report, in a manner and form prescribed by the department of revenue, that identifies the number of beverages in deposit beverage containers, by container size and type, manufactured in or imported into the state during the reporting period.

(c) All inventory reports and payments shall be made monthly and received no later than the fifteenth day of the month following the end of the reporting period.

(d) Payment shall be made by check or money order payable to the "Department of Revenue, State of Tennessee".

(e) No local government shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this part.

SECTION 6.

(a) Beginning March 1, 2011, every deposit beverage distributor shall pay to the department of revenue a deposit on each deposit beverage container manufactured in or imported into the state.

(b) The deposit shall be five cents (5¢), and shall remain at that level until changed by an act of the general assembly.

(c) Payment of the deposit shall be made simultaneously with, and according to the same terms as, payment of the container recovery fee as described in Section 5(b)-(e).

SECTION 7.

(a) Beginning April 1, 2011, every deposit beverage distributor shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Tennessee. The deposit charge shall appear as a separate line item on any invoice or sales receipt. None of the deposit charge shall be subject to any state tax under title 67.

(b) Beginning April 1, 2011, every dealer shall charge the consumer at the point of sale a deposit equal to the refund value for each deposit beverage container sold in Tennessee, except on beverages intended for on-premises consumption. The deposit

charge shall appear as a separate line item on any sales receipt or invoice. None of the deposit charge shall be subject to any state tax under title 67.

SECTION 8.

(a) Beginning April 1, 2011, every deposit beverage container sold in this state shall have a Tennessee refund value of five cents (5¢). The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed, and may not be collected more than once.

(b) The refund value shall be clearly printed, embossed, stamped, labeled, or otherwise marked on the container, along with the word "Tennessee" or the letters "TN". The names or letters representing other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules, and in a form and manner prescribed by the board.

(c) Each deposit beverage container shall encode within the universal product code or similar machine-readable indicia, information regarding the size and type of container and the refund value of the container in the states in which the container is intended to be sold.

(d) Inventory already in circulation on April 1, 2011, shall be affixed or sold with an adhesive sticker bearing the refund value of the container, the words "Tennessee" or the letters "TN," and a bar code bearing the redemption information. These stickers shall be purchased from the department of revenue by the beverage distributors, who shall pay the deposit value of five cents (5¢) per sticker.

(e) This section does not apply to any type of refillable beverage container.

SECTION 9.

(a) There is established in the state treasury by the department of revenue the

“deposit beverage container fund”, hereafter “fund”, into which shall be deposited all:

- (1) Revenues generated from the container recovery fee;
- (2) Revenues generated from the deposit beverage container deposit;
- (3) Accrued interest from this fund; and
- (4) Fines and penalties assessed for violations of this part.

(b) Moneys in the fund shall be used to:

- (1) Reimburse refund values for deposit beverage containers redeemed by certified redemption centers pursuant to Section 17;
- (2) Pay handling fees for deposit beverage containers redeemed by certified redemption centers pursuant to Section 21;
- (3) Pay administrative fees to certified processors pursuant to Section 22;
- (4) Reimburse disposal costs to certified processors pursuant to Section 20;
- (5) Pay certified redemption centers or certified processors their share of fines collected pursuant to Section 29;
- (6) Fund all administrative, accounting, auditing, and compliance activities associated with the deposit beverage container program;
- (7) Employ personnel to oversee the implementation of the deposit beverage container program, including permitting and enforcement activities; and
- (8) Defray associated office expenses.

(c) Pursuant to Section 10, monies deposited in the fund shall also be used to:

- (1) Reimburse the department of transportation for the loss of funding of the existing county litter grants program provided for in §§ 41-2-123, 57-5-201, and 67-4-402, and pursuant to subsection (a) of Section 10;

(2) Reimburse local governments for any loss in additional revenue that is not provided for in subdivision (c)(1) and, pursuant to Section 31, that is attributable to the repeal of Chapter 86 of the Public Acts of 2005 relative to tax increases imposed by Chapter 307 of the Public Acts of 1981, and extended by Chapter 769 of the Public Acts of 1984, Chapter 33 of the Public Acts of 1987, Chapter 30 of the Public Acts of 1991, Chapter 2 of the Public Acts of 1995, Chapter 81 of the Public Acts of 1999; and Chapter 86 of the Public Acts of 2005.

(d) Monies deposited in the fund may also be used to:

(1) Establish or support certified redemption centers, or both establish and support such centers, including microsite certified redemption centers, pursuant to Section 16;

(2) Support certified processors; and

(3) Provide grants to local governments for solid waste management, recycling, litter control, and other programs and activities related to the purposes of this part.

(e) Any moneys remaining in the fund at the end of any fiscal year shall escheat to the state, shall remain in reserve until expended for purposes consistent with or authorized by this act, and shall not revert to the general fund on any June 30. Any excess revenues from interest earned by such revenues shall not revert on any June 30, but shall remain available for expenditure in subsequent fiscal years. Any unexpended allocation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

SECTION 10.

The following annual allocations shall be made from the fund by the department of revenue:

(1) A sum sufficient shall be allocated annually from the fund to reimburse the department of transportation for the loss of funding of the existing county litter grants program, including funding for litter education and eradication activities by county governments and Keep Tennessee Beautiful, provided in §§ 41-2-123, 57-5-201, and 67-4-402.

(A) Payment shall be made annually to the department of transportation, no later than September 1 of each year. The first payment shall be made no later than September 1, 2010;

(B) The amount of payment shall be based on sales of malt beverages and soft drinks in Tennessee during the preceding fiscal year, as determined by tax returns filed with the department of revenue by manufacturers, bottlers, importers or distributors of malt beverages and soft drinks;

(C) The payment amount shall be equal to the sum of the products of the following calculations:

(i) Fifty cents (\$0.50) per taxable 31-gallon barrel or partial barrel of malt beverage sold during the payment period; and

(ii) Four-tenths of one percent (0.4%) of taxable gross receipts of soft drinks sold during the payment period; and

(2) A sum sufficient shall be allocated annually to reimburse local governments for any loss in additional revenue that is not provided for in subdivision (1) of this section and pursuant to Section 31, that is attributable to the repeal of chapter 86 of the Public Acts of 2005 of the tax increases imposed by Chapter 307 of the Public Acts of 1981, and extended by Chapter 769 of the Public Acts of 1984, Chapter 33 of the Public Acts of 1987, Chapter 30 of the Public Acts of 1991, Chapter 2 of the Public Acts of 1995, Chapter 81 of the Public Acts of 1999; and Chapter 86 of the Public Acts of 2005.

SECTION 11.

(a) The deposit beverage container program shall be administered by the division of solid waste management within the department of environment and conservation, with accounting functions performed by the department of revenue.

(b) The board shall create a separate administrative entity within the division of solid waste management, with dedicated positions funded by the deposit beverage container fund. This entity shall be known as the deposit beverage container program.

(c) The commissioner of revenue may contract the accounting services of a third party to meet the accounting requirements of the deposit beverage container program. The costs for this service shall be reimbursed by the deposit beverage container fund.

(d) The department may produce brochures, websites, videos and other promotional materials that the board determines to be necessary to inform the public about the goals, operations, benefits and outcomes of the deposit beverage container program.

SECTION 12. The comptroller of the treasury shall conduct a management and financial audit of the deposit beverage container program for fiscal years 2010-2011 and 2011-2012, and for each fiscal year thereafter ending in an even-numbered year. The comptroller of the treasury shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the general assembly and the departments of revenue and environment and conservation on or before January 2 following the end of the preceding reporting period. The costs incurred by the comptroller of the treasury for the audit shall be reimbursed by the deposit beverage container fund. The comptroller of the treasury may contract the audit services of a third party to conduct the audit.

SECTION 13. The board and the department of revenue are authorized to promulgate rules and regulations to effect the purposes of this act. All such rules and regulations shall be

promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 14. Full implementation of the deposit beverage container program shall commence on April 1, 2011.

SECTION 15. Every dealer shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, phone number and hours of operation of the closest certified redemption centers.

SECTION 16. The board shall promulgate by rule the definition of an underserved area with regard to certified redemption centers. If an area is underserved according to this definition, the department, with input from the affected county, shall use its best efforts to see that a certified redemption center or microsite certified redemption center is established in that area. If no other funding is available, monies from the deposit beverage container fund may be used to establish and support the certified redemption center or microsite certified redemption center.

SECTION 17.

(a) Prior to participating in the program, any redemption center wishing to operate in Tennessee shall be certified by the department according to regulations promulgated by the board. These regulations shall require that all information submitted to the department be under penalty of perjury. Applications for certification shall be filed with the department, in a form and manner prescribed by the board.

(b) Municipal, metropolitan, and county governments, nonprofit organizations, dealers, businesses, existing processors, and individual persons are eligible to apply for certification to operate a certified redemption center.

(c) The department shall establish criteria to determine the number of certified redemption centers needed to adequately serve each county, based on population density, population distribution, consultation with the respective counties and other

factors. The department may use these criteria in issuing certifications.

(d) The department may, at any time, review the certification of a certified redemption center. After written notice to the person responsible for the establishment and operation of the certified redemption center, the department, after it has afforded the certified redemption center operator a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(e) All certified redemption centers shall:

(1) Accept all types of empty deposit beverage containers on which a Tennessee deposit has been paid;

(2) Accept deposit beverage containers from the public a minimum number of hours or days per week, according to rules promulgated by the board;

(3) Maintain redemption areas in full compliance with applicable laws and according to orders and rules established by the board, including permitting and certification requirements;

(4) Take reasonable actions to identify, and prevent payment of a refund value on, any beverage container or other product on which a Tennessee deposit has not been paid, including containers that the certified redemption center knows, or ought to know, have been brought into the state from another state;

(5) Determine the quantities of deposit beverage containers by manual count, electronic scan, weight, volume or other method authorized by the board, and in a form and manner prescribed by the board;

(6) Pay either to the consumer, or to a charity or other recipient designated by or intended by the consumer, an amount not less than the established refund value for all valid deposit beverage containers;

(7) Maintain a log of consumer transactions, including amounts donated to charity or other designated organization, and the name and address of the charity or organization;

(8) Sort, consolidate, and, if authorized by the department, cancel the redeemed deposit beverage containers according to rules promulgated by the board;

(9) Take reasonable precautions to ensure that redeemed deposit beverage containers are placed in a secure area while awaiting purchase by a certified processor;

(10) Ensure that all redeemed deposit beverage containers are purchased by a certified processor, at prices consistent with prevailing market scrap values, transportation costs and other factors. If a container material has a market scrap value of zero or less than zero, the negative value shall be noted on any transaction receipts, and the payment entered as zero;

(11) Provide to the certified processor, or the processor's agent, a shipping report, in a form and manner prescribed by the board, and including but not limited to the following information:

(A) The individual-unit quantities, by container type and collectively, of all deposit beverage containers being shipped to the certified processor, and whether quantities in each instance were determined by manual count, electronic scan, weight, volume, or a combination thereof;

(B) The amounts paid in refund values for the redeemed deposit beverage containers, by container type and collectively;

(C) Weight tickets, if applicable;

(D) Printouts of electronic transaction logs, if applicable;

(12) Prepare, maintain, and provide to the department upon request, all records and documentation of redemption activity, including but not limited to consumer transaction logs, shipping reports, weight tickets, transaction receipts received from certified processors, electronic transaction printouts as applicable, and any documents authorizing the canceling of redeemed deposit beverage containers; and

(13) Provide to the department, in a form and manner prescribed by the board, and no later than October 1 of each year, a summary of redemption-center activity for the preceding fiscal year, including but not limited to, quantities of deposit beverage containers redeemed, by container type and collectively; the amount of charitable donations made, and the name and address of the receiving charities.

(f) Any certified redemption center that wishes to cancel redeemed deposit beverage containers as part of its regular handling procedures, must apply for and receive authorization to do so from the department, and shall perform and document the cancellations in a form and manner prescribed by the board.

(g) Any certified redemption center that wishes to accept refillable beverage containers from consumers shall do the following:

(1) Pay to the consumer the manufacturer's refund value for the refillable beverage container;

(2) Record the transaction in the consumer transaction log;

(3) Ensure that the refillable beverage container is received by a certified processor, willing purchaser or originating beverage distributor, who shall reimburse the manufacturer's refund value to the certified redemption center. The certified redemption center may negotiate a handling fee for the return of these containers.

(h) The quantity of beverage containers, including refillable beverage containers, recycled by a certified redemption center shall be credited to the local government where the certified redemption center is located for purposes of calculating solid waste diversion amounts and meeting regional solid waste reduction goals.

SECTION 18. Reverse vending machines may be used to satisfy the requirements of Section 17, except that that reverse vending machines are not required to accept refillable beverage containers; and provided that:

(1) The machines accept all types of empty deposit beverage containers that bear a valid Tennessee refund value;

(2) The machines pay out the full amount of the refund value via cash, credit slip, electronic credit or designated donation;

(3) The machines are monitored during operating hours by an attendant;

(4) The machines are routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds; and

(5) Should the reverse vending machine fail to accept, recognize or process a Tennessee deposit beverage container that is otherwise valid, the attendant shall manually accept the container and issue the appropriate refund value. The reverse vending machine shall display a toll-free phone number and mailing address that the consumer may contact if the conflict cannot be resolved, or if no attendant is available.

SECTION 19. Certified redemption centers may refuse to pay the refund value on any deposit beverage container which:

- (1) Is broken, corroded, dismembered or flattened;
- (2) Contains a free-flowing liquid;
- (3) Does not properly indicate a refund value; or
- (4) Contains or bears a significant amount of foreign material.

SECTION 20.

(a) Prior to participating in the program, processors shall be certified by the department and registered with the department of revenue according to regulations promulgated by the board. These regulations shall require that all information submitted to the department or to the department of revenue be under penalty of perjury. Applications for certification shall be filed with the department, in a form and manner prescribed by the board. Applications for registration shall be filed with the department of revenue, in a form and manner prescribed by the commissioner of revenue.

(b) The department may, at any time, review the certification of a certified processor. After written notice to the person of record responsible for the establishment and operation of the certified processor, the department, after it has afforded the certified processor operator a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may withdraw the certification of the facility if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(c) Certified processors shall:

- (1) Accept from certified redemption centers all types of deposit beverage containers that have been redeemed, quantified, sorted and, if authorized, canceled in accordance with program rules, and that are accompanied by a

shipping report prepared by the certified redemption center in accordance with program rules;

(2) Independently determine quantities of each type of deposit beverage container, either by manual count, electronic scan, volume, weight, or a combination of these methods, according to standards, averages and rules prescribed by the board; and document the quantities in a form and manner prescribed by the board;

(3)

(A) Perform a random sampling or samplings, in a form and manner prescribed by the board, of the redeemed deposit beverage containers, to ascertain that they bear a valid Tennessee refund value;

(B) If a significant discrepancy exists between the redemption quantities stated on the shipping report prepared by the certified redemption center, and the results of the independent quantification performed by the certified processor; or if a random sampling of redeemed beverage containers shows a significant proportion of beverage containers that do not bear a valid Tennessee refund value, the certified processor may withhold payment to the certified redemption center, or the department of revenue may withhold payment to the certified processor, pending further investigation by the department, according to procedures prescribed by the board. The board shall establish by rule what constitutes “significant discrepancy” and “significant proportion” relative to this section;

(4) Cancel the redeemed deposit beverage containers, if they have not already been canceled;

(5)

(A) Process the containers as needed for remanufacturing or sale to a willing purchaser;

(B) If, after making a good-faith effort, a certified processor is unable to locate a willing purchaser for beverage container material, the certified processor shall submit to the department a disposal request form, in a form and manner prescribed by the department, that describes the material and quantities, details efforts made to find a willing purchaser, and specifies the intended manner and location of disposal. The material shall not be disposed of without a written authorization to do so by the department. All rejected loads of deposit beverage containers shall be available for and subject to inspection by the department. The certified processor may recover costs associated with handling and disposing of the rejected material, by presenting to the department of revenue a written request for reimbursement, in a form and manner prescribed by the board, and accompanied by the disposal authorization and all associated receipts. The board shall establish by rule what constitutes "good-faith effort" relative to this section;

(6)

(A) Issue payment to certified redemption centers, in an amount that is the sum of all of the following amounts:

(i) The refund value of the redeemed deposit beverage containers received from the certified redemption center;

(ii) The prevailing handling fee for the redeemed deposit beverage containers, pursuant to Section 21; and

(iii) Payment for the container materials, in an amount that reflects and is consistent with prevailing market scrap prices, incurred transportation or delivery costs and other factors.

(B) Payment shall be made to the certified redemption center within ten business days, unless a significant discrepancy exists pursuant to this subdivision (c)(6), in which case payment may be withheld pending the outcome of an investigation by the department, according to procedures prescribed by the board;

(7) Provide to the certified redemption center a transaction receipt, prepared in a form and manner prescribed by the board. Information in the transaction receipt shall include at a minimum:

(A) The individual-unit quantities, by container type and collectively, of deposit beverage containers received from the certified redemption center, and whether quantities in each instance were determined by manual count, electronic scan, volume, weight, or a combination thereof;

(B) The weight, by container type and collectively, of deposit beverage containers received from the certified redemption center;

(C) The amounts paid in refund values to the certified redemption center, by container type and collectively;

(D) The amounts paid in handling fees to the certified redemption center, by container type and collectively; and

(E) The amounts paid in scrap values, by unit and in total, for each type of deposit beverage container purchased from the certified redemption center.

Containers with a market value of zero or less than zero shall be recorded, and the market value noted, but the payment shall be entered as zero;

(8) Submit to the department of revenue, pursuant to Section 23 and in a form and manner prescribed by the board, a processor's invoice for reimbursement or payment of refund values, handling fees, and administrative fees incurred in each separate transaction with a certified redemption center;

(9) For any refillable beverage containers received from the certified redemption center, reimburse the manufacturer's refund value to the certified redemption center and ensure that the refillable beverage containers are returned to the originating beverage distributor or sold to a willing purchaser. The certified processor may negotiate a handling fee with the originating distributor or willing purchaser for the return of these containers; and

(10) Maintain copies of all documentation, including but not limited to shipping reports, weight tickets, transaction receipts, requests-for-disposal and end-market information, and make them available, upon request, to the departments of revenue and environment and conservation.

SECTION 21.

(a) Beginning April 1, 2011, the department of revenue shall pay to a certified redemption center, by agency of a certified processor, a handling fee for each deposit beverage container that has been redeemed by the certified redemption center and received by the certified processor in accordance with regulations and standards established by the board.

(b) For the period from April 1, 2011, through December 31, 2012, the amount of the handling fee shall be two cents (2¢) per container.

(c) Beginning January 1, 2013, and annually thereafter on every January 1, the handling fee shall be renewed or revised by the board, in consultation with the commissioner of revenue, and based on review of redemption rates for the preceding

fiscal year, the availability of funds in the deposit beverage container fund, and other factors. The handling fee shall not be more than two cents (2¢) per container nor less than one cent (1¢) per container. These amounts shall remain in effect until changed by an act of the general assembly.

SECTION 22. For every redeemed deposit beverage container received by a certified processor from a certified redemption center in accordance with rules and regulations prescribed by the board, the department of revenue shall pay to the certified processor an administrative fee equal to two percent (2%) of the collective refund values of the deposit beverage containers, to defray the certified processor's costs of complying with the administrative requirements of this program.

SECTION 23.

(a) Beginning April 1, 2011, for every completed redemption-center transaction, a certified processor shall submit to the department of revenue a processor's invoice for an amount equal to the sum of all of the following:

(1) The total amount of refund values paid by the certified processor to the certified redemption center;

(2) The total amount of handling fees paid by the certified processor to the certified redemption center; and

(3) The total amount of administrative fees due to the certified processor pursuant to Section 22.

(b) The processor's invoice shall be accompanied by supporting documentation that shall include but not be limited to:

(1) A copy of the transaction receipt prepared by the certified processor;

(2) A copy of the shipping report prepared by the certified redemption center; and

(3) Where applicable, a printout of any electronic transaction logs.

(c) Certified processors may submit multiple invoices at once, provided that, the required information and documentation are submitted for each separate redemption-center transaction, and that every redemption-center transaction is invoiced within thirty (30) days.

(d) Payment must be made by the department of revenue within ten (10) business days of receipt and approval of an invoice and accompanying documentation.

SECTION 24. Deposit beverage distributors, certified redemption centers, and certified processors shall, upon request, and under penalty of perjury, make their records available for inspection by the departments of revenue and environment and conservation, duly authorized agents of these departments, the comptroller of the treasury, or the comptroller's auditor.

SECTION 25. The department, in consultation with the department of revenue, shall compile a report on the deposit beverage container program for each fiscal year, except that the first such report shall be for the period from October 1, 2009, through June 30, 2011. These reports shall be delivered to the general assembly and the governor on January 2 following the end of the preceding reporting period. Reports shall contain, but not be limited to:

(1) Performance indicators;

(2) Revenues and expenditures;

(3) Measures of effectiveness, including recycling rates and impacts on litter; and

(4) Economic impacts, including numbers of certified redemption centers, number of jobs supported or created, and tonnage, market value and end uses of recovered materials.

SECTION 26.

(a) The board shall convene an advisory committee to assist it in developing any rules needed to implement this part. The board shall select members of the committee

so as to obtain input on the state level, as well as from representatives of any or all of the following:

- (1) Counties;
- (2) Municipalities;
- (3) Metropolitan areas;
- (4) Solid waste managers;
- (5) Dealers;
- (6) Consumers;
- (7) Redemption centers;
- (8) Redemption service providers;
- (9) Recyclers;
- (10) Manufacturing end-users;
- (11) Nonprofit organizations;
- (12) Keep Tennessee Beautiful;
- (13) Bottlers;
- (14) Distributors;
- (15) Importers, and
- (16) Others as recommended by the commissioner.

(b) Members of the committee shall be appointed by the commissioner and shall serve at the commissioner's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the commissioner.

SECTION 27. Except as provided otherwise in Section 28, any person who violates any provision of this part or any rule adopted pursuant to this part shall be assessed a civil penalty of not more than ten thousand dollars (\$10,000) for each separate offense. Each day of each

violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative or civil actions.

SECTION 28.

(a) If the board determines that any person has violated or is violating any provision of this part, any rule adopted pursuant to this part, or any term or condition of a certification or permit issued pursuant to this part, the board may do any one (1) or more of the following:

(1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing an administrative penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in chancery or circuit court in Davidson County, to seek appropriate relief, including a temporary, preliminary, or permanent injunction against violations of this act, the imposition and collection of civil penalties or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a certification or permit issued pursuant to this act and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this part shall become final, unless the person or persons named in the order request, in writing, and not later than twenty (20) days after the notice of order is served, a hearing before the board. Any penalty imposed pursuant to this part shall become due and payable twenty (20) days after the notice of penalty is served, unless the person named therein requests in writing a hearing before the board. Whenever a hearing is requested on any penalty imposed pursuant to this part, the

penalty shall become due and payable upon the issuance of a final order confirming the penalty in whole or in part.

(d) Any hearing conducted pursuant to this section shall be conducted as a contested case pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If, after a hearing held pursuant to this section, the board finds that a violation or violations have occurred, the board shall:

(1) Affirm or modify any penalties imposed or modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

(e) If, after a hearing on an order or penalty contained in a notice, the board finds that no violation has occurred or is occurring, it shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(f) If the amount of any penalty is not paid to the department within thirty (30) days after an order becomes final, the board may institute a civil action in the name of the state to collect the final penalty amount. In any proceeding to collect the administrative penalty imposed, the board need only show that:

(1) Notice was given;

(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The administrative penalty was imposed; and

(4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the board shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

SECTION 29.

(a) The obligations to accept empty beverage containers and pay the refund value and handling fees for such containers as described in this act apply only to containers originally sold in this state as filled deposit beverage containers.

(b) It is an offense for a person who, during any single transaction, tenders or tries to tender to a certified redemption center more than twenty-four (24) empty beverage containers that the person knows or has reason to know were not originally sold in this state as filled deposit beverage containers commits a Class A misdemeanor with fines as provided in subsection (d).

(c) Certified redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information:

“WARNING: Persons tendering containers for redemption that were not originally purchased in Tennessee may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender.”

(d) A person who violates this section is subject to a fine of up to the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of more than twenty-four (24) containers.

(e) The balance of each fine collected pursuant to this section, after deducting court costs shall be placed in the deposit beverage container fund and shall remain in the fund to be expended for activities authorized by this part; with the exception that, if the violation was detected and reported by a certified redemption center or a certified

processor, then the fine shall be disposed of as follows: fifty percent (50%) of the fine shall remain in the fund to be expended for activities authorized by this act, and fifty percent (50%) of the fine shall be awarded to the certified redemption center or certified processor reporting the violation, as an incentive to be vigilant for and respond to illegal tenders and/or attempts to otherwise defraud the program.

SECTION 30. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 31. Section 1 of Chapter 86 of the Public Acts of 2005 is amended by deleting the language "June 30, 2010, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee," and by substituting instead the language "June 30, 2009".

SECTION 32. This act shall take effect upon becoming a law, the public welfare requiring it.